

REMARKS

Claims 4, 8 and 9 have been amended to correct typographic errors. Claim 6 has been amended so that it now depends from claim 5. Claim 22 has been amended to comply with proper claim dependency requirements. Claims 9-24 have been withdrawn due to the Restriction Requirement. No new matter has been introduced by way of these amendments. Entry and consideration of the foregoing amendments is respectfully requested.

RESPONSE

I. Restriction Requirement

Claims 9 to 24 are now indicated as withdrawn. The Examiner is kindly reminded of the duty to consider rejoinder of the product claims and method claims if one or more product claims are found allowable.

II. Objections

The objections on claims 4 and 8 are moot since Applicant amended the claims to present the correct spelling of *Phleum pratense* L.

III. Rejections under 35 U.S.C. 103(a)

Claims 1-8 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Glicksman et al. and further in view of Clarke et al.

As an initial and important aspect of the presently claimed invention, Applicant emphasizes that independent claims 1 and 5 of the instant application require, respectively, that the claimed food products comprise “the whole seeds, seed parts, flour or starch obtained from *Phleum* spp. seeds” or “flour obtained from *Phleum* spp. seeds.” Since neither Glicksman et al. nor Clark et al. teach anything about producing and/or using the whole seeds, seed parts, flour or starch obtained from *Phleum* spp. seeds in any food compositions, the combined teachings of these references necessarily fails to render the instant claimed invention obvious. Not only is there no motivation to combine these references so as to arrive at the instantly claimed invention,

there is absolutely no relevant teaching in the references so that one of ordinary skill would even consider these references in arriving at the instantly claimed invention.

Glicksman et al. teach and claim a gluten-free composition comprising starch, a cellulosic gum, and alpha-cellulose. As admitted by the Examiner, “Glicksman does not disclose flour mixture composition from seeds of *Phleum pratense L.*” (Office Action, page 3, No. 8). In describing their preferred embodiments, Glicksman et al. state that as a result of their invention “it has been possible to eliminate *all* wheat flour (or corn flour) as a constituent in the flour of the instant invention” (column 3, lines 54-56, italics present in the original). Thus, the stated purpose of their invention is to eliminate the flour, not look for an alternative source of flour. Glicksman et al. state “the very essence of the invention resides in the combination of starch and cellulosic gums to cooperate with the surface moisture of the alpha-cellulose and with the alpha-cellulose per se to form a flour which has the same film forming characteristics as that of gluten-containing wheat flour” (column 3, lines 3-8). Thus, Glicksman et al. teach away from utilizing the flour of any plant species, let alone that of a plant species such as a *Phleum* spp. not considered suitable for human food products until Applicant’s present invention. Clark et al. fail to fill the void in the teaching of Glicksman et al. so as to arrive at the presently claimed invention.

Clarke et al. teach producing gums from cultured *Phleum pratense* cells and using such cultured gums in an extremely wide array of products, including food products. While one of ordinary skill in the art might possibly look to the teachings of Clarke et al. for another source of plant gums to use in the food compositions taught by Glicksman et al., they would find absolutely no teaching or suggestion in Clarke et al. to utilize the whole seeds, seed parts, flour or starch obtained from *Phleum* spp. seeds to produce the food products of the presently claimed invention. The Examiner’s statement that “it would have been obvious to one of ordinary skill in the art to combine Clarke’s *Phleum pratense* gum composition into Glickman’s flour composition” (Office Action, sentence bridging pages 3-4) is a mere conclusion without any basis in the teachings themselves. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”). Here, the Examiner has failed to provide any articulated

reasoning as to why one of ordinary skill in the art would utilize the whole seeds, seed parts, flour or starch obtained from *Phleum* spp. seeds as claimed in the food products of the present invention. It would appear that the Examiner is solely relying upon improper hindsight in concluding that the presently claimed invention is obvious in view of the cited teachings.

For the reasons described above, Glicksman et al. actually teach away from the present invention and the teachings of Clarke et al. clearly fail to provide any suggestion whatsoever so as to arrive at the presently claimed invention. Applicant respectfully requests that the Examiner withdraw the rejection and allow the presently pending claims to issue.

Hagman (Delicious Dining Without Wheat, 1993) was listed as one reference cited by the Examiner, but no rejection was made based on Hagman in the Office Action. Applicant respectfully submits that Hagman is completely silent on using the whole seeds, seed parts, flour or starch obtained from *Phleum* spp. seeds in food products for human consumption. Thus, Hagman by itself, or combined with Glicksman et al. and/or Clarke et al, also fails to teach or suggest that the present invention would have been obvious to one of ordinary skill in the art at the time of the invention.

CONCLUSION

This reply is fully responsive to the non-final rejection mailed January 11, 2010. In view of the foregoing, Applicant respectfully submits that no further impediments exist to the allowance of this application and, therefore, requests an indication of allowability.

Except for issue fees payable under 37 CFR §1.18, the commissioner is hereby authorized by this paper to charge any additional fees during the pendency of this application including fees due under 37 CFR §1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-1283.

If the Examiner has any further questions relating to this Reply or to the application in general, he is respectfully requested to contact the undersigned by telephone so that allowance of the present application may be expedited.

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Respectfully submitted,
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